

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Heath & Lisa Miller,**  
Petitioners-Appellants,

**v.**

**Jasper County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 12-50-0579**  
**Parcel No. 08.26.482.003**

On August 26, 2013, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants, Heath and Lisa Miller, were self-represented. Jasper County Attorney Michael K. Jacobson is counsel for the Board of Review. Assistant County Attorney Susan Wendel represented the Board of Review at hearing. The Appeal Board, having reviewed the record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Heath and Lisa Miller are the owners of a residential, single-family property located at 420 E 25th Street N, Newton, Iowa. According to the property record card, the property is a split level home with 1220 square feet of total living area built in 1979. It has a total of 610 square feet of basement area of which 400 square feet is finished. The home has 288 square feet of wood deck area and 128 square feet of concrete patio. The property also has a 484 square foot attached garage. The home is of average quality (4+10) grade and is in very good condition. The site is 0.255 acres.

The Millers protested to the Jasper County Board of Review regarding the 2012 assessment of \$155,050, which is allocated as follows: \$26,460 in land value and \$128,590 in improvement value. The 2012 assessment of the subject property did not change from the 2011 assessment. Their claim

was based on the following grounds: 1) that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1); 2) that the property was assessed for more than the value authorized by law under Iowa Code § 441.37(1)(a)(2); and 3) that there was a downward change in value under sections 441.37(1)(b) and 441.35(2). They asserted the correct value was \$128,985, with \$68,479 in land value and \$60,506 in improvement value. The Board of Review denied the Millers' claims.

The Millers then appealed to this Board re-asserting their claims. They assert the value of the subject property is \$125,250, with \$21,500 in land value and \$103,750 in improvement value. 2012 was an interim assessment year, and because the property's assessment did not change from the previous year, the only ground available for protest is that there has been a downward change in value since the last assessment. *Eagle Food Ctrs., Inc. v. Bd. of Review of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). Therefore, the only ground this Board will consider is whether the property suffered a downward change in value between 2011 and 2012.

Heath Miller testified there is a power substation behind their property which he believes devalues their property. Miller stated that his property has a substantially higher value when comparing assessed values of other similar properties. In looking at current sales he claims his assessed value is much greater than recent sales and that properties listed for sale are listed for less than his assessed value. Miller did not produce evidence to support his claim.

Miller testified the property located at 2317 N Avenue E (Exhibit D) most closely resembled his property and sold in July 2013 for \$127,000, or \$121.76 per-square-foot. In contrast, the subject property is assessed at \$127.09 per-square-foot. Miller testified the sale price shows the value of area homes and, in his opinion, values have remained about the same for the last four to five years. He believes this sale documents the value of the subject property; however, we do not find that one 2013 sale demonstrates the property's fair market value for the 2011 or 2012 assessment year. This sale

occurred nineteen months after the January 1, 2012, assessment date and as such, we give it no consideration in establishing a 2011 or 2012 market value.

Peter Scarnati, an appraiser with the Jasper County Assessor's office, testified for the Board of Review. The Board of Review submitted property record cards of five properties it believes are comparable. (Exhibits A-E). Scarnati testified regarding the differences in size, basement, lot, garage, age, and condition of these properties compared to the subject property. Of these, two sold in 2011 and 2012, with sale prices per-square-foot ranging from \$126.74 to \$155.01. The Board of Review did not submit any written analysis, such as an adjustment grid, to supplement Scarnati's testimony or explain how he arrived at his conclusions. Overall, we find Scarnati's testimony to be of little value without additional evidence to support his assertions.

Lastly, regarding the Millers' concern with their location relative to power lines, Scarnati testified there had been two 2004 home sales with power lines in the back. Both properties sold in excess of their assessed values. He concluded there was no objective data establishing the sales price of these properties was affected by the power lines.

To prove a change in value, the Millers must establish the fair market value of the subject property both on January 1, 2011, and on January 1, 2012. *Equitable Life Ins. Co. of Iowa v. Bd. of Review of the City of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1997). The assessed value cannot be used to establish either of these fair market values. *Id.* Because the Millers did not establish the subject property's fair market value as of January 1, 2011, or January 1, 2012, we find their evidence is insufficient to prove a change in value.

### ***Conclusion of Law***

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply.

Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

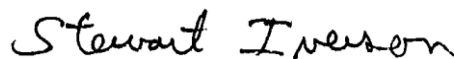
In a non-reassessment or "interim" year, when the value of the property has not changed, a taxpayer may only challenge its assessment on the basis that there has been a change in value. *Eagle Food Ctrs., Inc.*, 497 N.W.2d at 862. Iowa Code section 414.37(1)(b) and its reference to section 441.35(2) give rise to the claim of downward trend in value. For the Millers to be successful in their claim of change in value, they must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co. of Iowa*, 252 N.W.2d at 450. The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for the Millers to prove the last regular

assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

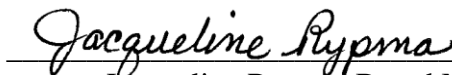
In this case, the Millers failed to provide sufficient evidence of either the January 1, 2011, or January 1, 2012, market value of the subject property to show a downward change in value. The Millers rely on a July 2013 sale of a property they deem comparable to show the subject property's value. We do not find that a single, unadjusted sale, which occurred nineteen months after the assessment date, is sufficient to establish the subject property's fair market value. Likewise, it is also insufficient to show the subject property suffered a downward change in value from 2011 to 2012.

THE APPEAL BOARD ORDERS the assessment of the Millers' property located at 420 E 25th Street N, Newton, Iowa, of \$155,050, as of January 1, 2012, set by the Jasper County Board of Review, is affirmed.

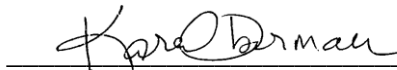
Dated this 12th day of September, 2013.



Stewart Iverson, Presiding Officer



Jacqueline Rypma, Board Member




Karen Oberman, Board Member

Copies to:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>September 12, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	